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8 IN THE UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
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11 UNITED STATES OF AMERICA,  
12 Plaintiff,  
13 v.  
14 VICTOR SANCHEZ SEPULVEDA ,  
15 Defendant.  
16

CASE NO. 1:02-CR-05408-AWI

ORDER DENYING DEFENDANT’S MOTION TO  
REDUCE SENTENCE PURSUANT TO TITLE 18  
U.S.C. § 3582(c)(2)

17 The defendant has filed a motion under 18 U.S.C. § 3582(c)(2), seeking a reduction in his  
18 sentence on the basis of Amendment 782 to the Sentencing Guidelines which revised the Drug Quantity  
19 Table in U.S.S.G. § 2D1.1 and reduced by two levels the offense level applicable to many drug  
20 trafficking offenses. Although the Government has not filed an opposition, from the face of the  
21 defendant’s motion it is clear that the defendant is not eligible for a reduction under U.S.S.G. § 1B1.10  
22 because Amendment 782 does not operate to lower the guideline range for the quantity of  
23 pseudoephedrine (converted to methamphetamine quantity equivalency) attributed to the defendant. For  
24 that reason, the Court will deny the defendant’s motion.

25 Section 3582(c)(2) authorizes district courts to modify an imposed sentence “in the case of a  
26 defendant who has been sentenced to a term of imprisonment based on a sentencing range that has  
27 subsequently been lowered by the Sentencing Commission.” *United States v. Dunn*, 728 F.3d 1151,  
28 1155 (9th Cir. 2013). Effective November 1, 2014, the Commission promulgated Amendment 782,

1 which generally revised the Drug Quantity Table and chemical quantity tables across drug and chemical  
2 types. The Commission also voted to make Amendment 782 retroactively applicable to previously  
3 sentenced defendants.

4 However, pursuant to U.S.S.G. Section 1B1.10 (a)(2)(B): "A reduction in the defendant's term  
5 of imprisonment is not consistent with this policy statement and therefore is not authorized under 18  
6 U.S.C. § 3582(c)(2) if . . . an amendment listed in subsection (c) does not have the effect of lowering the  
7 defendant's applicable guideline range." U.S.S.G. § 1B1.10 (a)(2)(B). A district court's authority to  
8 modify a sentenced is constrained by the Sentencing Commission. *Dillon v. United States*, 560 U.S.  
9 817, 825-826 (2010).

10 In this case, the sentencing court found a base offense level of 38 pursuant to USSG § 2D1.1, as  
11 the quantity of actual methamphetamine that could have yielded from the 20 cases of pseudoephedrine  
12 tablets possessed in the offense was 15.5 kilograms of actual methamphetamine. *See* U.S.S.G. §  
13 2D1.1(c)(1) (2003). That amount exceeded the then-existing 1.5 kilogram threshold for actual  
14 methamphetamine, resulting in a base offense level of 38. U.S.S.G. § 2D1.1(c)(1)(2003) Under the  
15 amended guidelines, a sentencing level of 38 applies where the amount of actual methamphetamine is  
16 4.5 kilograms of more. U.S.S.G. § 2D1.1(c)(1) (2015). The defendant's offense level remains exactly  
17 what it was at the time of sentencing. The Ninth Circuit agrees that where application of the pertinent  
18 amendment does not result in a different sentencing range, no reduction of sentence may occur. *United*  
19 *States v. Leniear*, 574 F.3d 668, 673-74 (9th Cir. 2009). Accordingly, the defendant may not receive  
20 any relief under Section 1B1.10.

21 Based on the foregoing, IT IS HEREBY ORDERED that the defendant's motion is denied.

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23 IT IS SO ORDERED.

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25 Dated: April 26, 2017

  
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26 SENIOR DISTRICT JUDGE  
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